REGULATION (39-) 26-102.4.5.

For purposes of this regulation food includes food and drink.

Any food, as specified in 7 U.S.C. section 2012(g), as such section exists on October 1, 1987, or is thereafter amended, which is purchased with food stamps pursuant to the federal food stamp program is exempt from the state sales tax and from all local sales taxes, including those of home rule municipalities.

Any food, as specified in 42 U.S.C. section 1786, as such section exists on October 1, 1987, or is thereafter amended, which is purchased with WIC vouchers or checks pursuant to the federal special supplemental program for women, infants, and children is exempt from the state sales tax and from all local sales taxes, including those of home rule municipalities.

If a purchase is exempt from the state sales tax as a qualified purchase with food stamps or WIC vouchers or checks, it is also exempt for Regional Transportation District (RTD) sales tax purposes and for tourism tax purposes.

Any food not purchased with federal food stamps or WIC vouchers or checks is subject to taxation or exemption as provided in paragraphs 1, 2 and 3 below:

- Food for domestic home consumption as defined by the federal food stamps a. (1) program in 7 U.S.C. sec. 2012(g) is exempt from taxation as provided below. except for those items specified in 1.c. (This list of food and nonfood items under the federal food stamp program is intended as a guide and not a complete listing.) The federal food stamp program definition of food includes, among other items, meat, poultry, fish, bread and breadstuffs, cereals, vegetables, fruits, fruit and vegetable juices, dairy products, coffee, tea, cocoa, candy, breath mints, condiments, spices, soft drinks, cakes, cookies, potato chips, special dietary foods (e.g., diabetic and dietetic), enriched or fortified foods, health food items (e.g., Metrecal, Enfamil, Sustegen, wheat germ, brewer's yeast, sunflower seeds which are packaged for human consumption, rose hips powder which is used for preparing tea, and other food products which are substituted for more commonly used food items in the diet), infant formulas, and items incorporated into foods with other ingredients (e.g., pectin, lard, and vegetable oils).
 - (2) Seeds and plants which produce food for human consumption are exempt from sales taxes only when they are purchased with food stamps. However, for state sales tax purposes see §39-26-716(4)(b), C.R.S.
 - (3) Water marketed in containers and ice for human consumption are exempt from taxation, except for carbonated water as specified in 1.c.(1) of this regulation.
- b. Items which are considered nonfood items under the federal food stamp program and thus are subject to sales tax include:
 - (1) Nonfood items even if sold in grocery or similar type stores (e.g., hardware, clothing, common household items such as cooking utensils, cleaning and paper products, soaps, toiletry articles, grooming items and cosmetics);
 - (2) Alcoholic beverages but excluding cooking wine, wine vinegar, and non-alcoholic cocktail mixes;
 - Tobacco and tobacco products (except that cigarettes are exempt from the sales tax by virtue of §39-26-706(1), C.R.S.;

- (4) Foods which are hot at the point of sale and which are kept above room temperature to make them palatable and suitable for immediate consumption, food marketed to be heated on the premises whether or not hot at the point of sale, and other food sold for consumption on the premises;
- (5) Items not intended for human consumption (e.g., laundry starch, pet foods, other animal foods, and seeds marketed or packaged as bird seed);
- (6) Items specifically labeled as being for use other than human consumption (e.g., decorative dye for hard cooked eggs);
- (7) Food preservation equipment and items (e.g., pressure cookers, canning jars and lids, paraffin, freezer containers, and wrapping paper);
- (8) Medicines (except that prescription drugs are exempt from the state sales tax by virtue of §39-26-717(1)(a), C.R.S.;
- (9) Therapeutic products and deficiency correctors (e.g., vitamins and minerals which are marketed in various form such as tablets, capsules, powders and liquids; products such as cod liver oil which is used primarily as a source of vitamins A and D; and other such items which are primarily used for medicinal purposes or as health aids). (These products serve as supplements to food or food products rather than as food and, therefore, are not eligible. Because essential vitamins and minerals occur naturally in foods, a good diet will include a variety of foods that together will supply all nutrients needed. Since these products serve as deficiency correctors or therapeutic agents to supplement diets deficient in essential nutrition rather than as foods, they are not eligible.);
- (10) Health aids (e.g., patent medicines and other products used primarily as health aids and therapeutic agents, including aspirin, cough drops or syrups, cold remedies, and antacids); and
- (11) Coffee and related food products sold to offices and commercial establishments as part of a "coffee" service.
- c. Items which may qualify as food under the federal food stamp program but do not qualify as food for purposes of the sales tax exemption (unless purchased with federal food stamps or WIC vouchers or checks) include:
 - (1) Carbonated water marketed in containers (e.g., sparkling or seltzer water; however, tonic water, pop and other sugar or sugar substitute carbonated beverages do qualify for the sales tax exemption);
 - (2) Chewing gum;
 - (3) Seeds and plants to grow food (e.g., tomato or other fruit or vegetable plants or seeds, however; for state sales tax purposes see §39-26-716(4)(b), C.R.S.;
 - (4) Prepared salads, other than frozen salads, requiring refrigeration sold in any size or type of container (e.g., egg salad, potato salad, fruit salad, pasta salad, gelatin salad, bean salad, fish salad, poultry salad, meat salad, etc.,) whether prepared by the retailer on site or at a warehouse, or by a manufacturer for sale to and by a retailer;

- (5) Salad bars (i.e., cut up fruits and vegetables sold in various sized servings, usually by the pound or plate, along with accessory foods and condiments, such as soup, rolls, crackers, and salad dressings);
- (6) Cold sandwiches other than frozen sandwiches;
- (7) Deli trays (e.g., meats, fish, cheeses, fruits or vegetables, etc., sold on trays prepared by or for the retailer);
- (8) Food sold by or through vending machines; and
- (9) Prepared food or food marketed for immediate consumption as specified in paragraphs 2 or 3 below.
- d. It is not the obligation of a retailer to collect the sales tax on food marketed for domestic home consumption which after purchase is converted to or used for other purposes which are taxable. Such conversion or use is subject to any applicable sales or use tax (e.g., edible oil used to lubricate machines and food and coffee purchased for office or commercial uses).
- While food marketed for domestic home consumption, with exceptions noted above, generally qualifies for the sales tax exemption, prepared food or food marketed for immediate consumption generally does not qualify. The following guidelines apply in determining whether food is considered food for home consumption contrasted with prepared food or food for immediate consumption:
 - a. Prepared food or food marketed for immediate consumption includes all food furnished or served for consumption at tables, chairs, or counters, or from trays, glasses, dishes, or other tableware provided by the retailer.
 - b. All hot foods and food marketed to be heated on the premises are considered to be prepared for immediate consumption and are therefore subject to tax regardless of the nature of the business making such sale and regardless of whether immediately consumed.
 - c. Prepared food or food marketed for immediate consumption also includes food served or furnished in or by restaurants, cafes, lunch counters, hotels, drugstores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carryout shops, and other like places of business at which prepared food is regularly sold, including sales from pushcarts, motor vehicles, and other mobile facilities. (See §39-26-104(1)(e) C.R.S.)
 - d. The following types of establishments typically do not sell food marketed for domestic home consumption: newsstands; gift shops; shops located in public transportation centers; offices or other public or commercial buildings; entertainment facilities (e.g., theaters); and recreation facilities (e.g., sports arenas and stadiums).
 - e. The following types of establishments typically do sell food marketed for domestic home consumption: grocery stores, convenience stores, bakeries, butcher shops, fruit and vegetable stores, and department stores.
- 3. In determining whether food is considered for domestic home consumption or prepared food or food for immediate consumption, the following guidelines apply to the specialized establishments enumerated below:
 - a. Bakery and Pastry Shops

- (1) Sales by bakeries or pastry shops which do not have eating facilities are not subject to tax:
- (2) Sales by bakeries or pastry shops which have eating facilities are taxable except for items sold on a take-out or to-go basis not to be consumed at the eating facilities provided by the retailer.

b. Ice Cream Shops

- (1) Sales of ice cream cones, cups, sundaes, and the like, marketed for immediate consumption are subject to tax.
- (2) Items marketed in containers or packages for domestic home consumption, such as ice cream, ice cream bars, popsicles and fudgesicles, toppings sold in cans or jars, and cakes or pies, are not taxable.
- c. Caterers. Normally all food sold by a caterer is subject to tax. However, if such caterer operates a retail store selling food items marketed for domestic home consumption, the rules governing taxability of food as set forth in paragraphs 1 and 2 apply. Sales by caterers of food from motor vehicles and other mobile facilities are taxable.
- d. Restaurants, Snack Bars, Carry Outs, Etc. All food sold by restaurants and similar establishments is subject to tax. (See §39-26-104(1)(e), C.R.S. However, when such restaurants also operate a pastry, ice cream, or grocery type sales operation, the rules applicable to such establishments apply to sales made from such operations.
- e. Liquor Stores. Food marketed for domestic home consumption by a liquor store is exempt. Alcoholic beverages, including spirituous, malt or vinous liquors, are taxable. However, cocktail mixes which do not contain alcohol, cooking wines, and wine vinegars are exempt.
- f. Street Vendors. Street vendors (e.g., push carts, mobile food stands, and the like) will generally be subject to tax on all their sales. Sales of vegetables, fruit, and other groceries marketed for domestic home consumption by mobile markets or door-to-door vendors are exempt.
- g. Vending Machines. All sales of food vended by or through machines are taxable except that all vending machine sales of 15 cents or less are exempt from the state sales tax.
- h. See, also, the exemption for certain vending machine sales in §39-26-714(2), C.R.S., which is effective on January 1, 2000, for state sales tax. For municipal and county sales taxes, the vending machine food exemption is effective only if the local government adopts the exemption by ordinance or resolution.